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OFFICE OF PETITIONS

In re Application of :
Jake Rachal : DECISION ON PETITION
Application No. 10/723,149 :
Filed: November 23, 2003 :
Attorney Docket No. 12871/1 :

This is a decision on the PETITION UNDER 37 CFR § 1.181(a) filed July 17, 2006.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed April 20, 2005. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). A Notice of Appeal was timely filed in response on October 24, 2005. A Notice of Abandonment was mailed on June 2, 2006 for failure to file an Appeal Brief.

Petitioner asserts that a proper reply in the form of a Request for Continued Examination (RCE), made timely by an accompanying petition for extension of time for response within the fifth month (and fee), was filed on May 23, 2005. In support thereof, petitioner submits a copy of the response filed May 23, 2005.

Petitioner's evidence has been reviewed, and is persuasive. However, consideration of their evidence is unnecessary. Their response, including an extension of time, is present in the application with a date of receipt of May 26, 2006 (and a certificate of mailing pursuant to § 1.8 thereon dated May 23, 2006). Furthermore, the RCE was proper, inasmuch as it included payment of the requisite RCE fee, and a submission in the form of an amendment. The extension of time was charged to a Deposit Account as authorized.

A response including an RCE, the requisite fee and a submission is a proper response after Notice of Appeal to avoid abandonment of an application.

Accordingly, the Notice of Abandonment mailed June 2, 2006 is hereby VACATED, and the holding of abandonment is hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Technology Center AU 3742 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for consideration by the examiner of the RCE and submission filed on May 26, 2006 (with a certificate of mailing dated May 23, 2006).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions